

Introduced by Senator Morrow

February 23, 2001

An act to add Section 332.2 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 997, as introduced, Morrow. Public utilities: bilateral forward contracts.

Under the Public Utilities Act, the Public Utilities Commission regulates the rates of public utilities, including electrical corporations. The act requires that all charges demanded or received by any public utility for any product or commodity furnished or to be furnished, or any service rendered or to be rendered, to be just and reasonable.

This bill would authorize an electrical corporation to achieve and thereafter maintain a portfolio of electricity supplies for its bundled service customers consisting of no less than 50%, and no greater than 95%, forward contracts. The bill would prohibit the portfolio of an electrical corporation that maintains the above-stated supply portfolio mix from being subject to reasonableness reviews by the commission. The bill would require the commission to deem reasonable, and not engage in a reasonableness review of certain contracts that meet guidelines established by the bill.

This bill would require each electrical corporation to file with the commission, quarterly, a report describing its then-current annual supply portfolio of long-term forward contracts and financial contracts, together with an explanation of whether and how the contracts meet the specified guidelines. Because a violation of the Public Utilities Act is a crime, this bill would impose a state-mandated local program by varying the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that the
2 customers of an electrical corporation, as defined in Section 218
3 of the Public Utilities Code, will benefit from an increased reliance
4 on longer-term contracts and a lessened reliance on spot markets
5 (day-ahead and real-time markets). Increased reliance on
6 longer-term purchases will bring needed price stability to all
7 consumers and may attract new electric supply into the state of
8 California.

9 (b) It is the intent of the Legislature to provide guidance for the
10 procurement of electricity by an electrical corporation, and to
11 establish standards under which the procurement will be deemed
12 reasonable, and to eliminate the need for after-the-fact
13 reasonableness reviews of an electrical corporation's electricity
14 procurement contracts, practices, and related expenses.

15 SEC. 2. Section 332.2 is added to the Public Utilities Code, to
16 read:

17 332.2. (a) It is the intent of the Legislature that an electrical
18 corporation, as defined in Section 218, shall, no later than July 1,
19 2001, achieve and thereafter maintain a portfolio of electricity
20 supplies for its bundled service customers consisting of forward
21 contracts sufficient to satisfy no less than 50 percent, and no
22 greater than 95 percent, of that portion of the electrical
23 corporation's peak monthly demand that is not already served
24 through pre-existing long-term supply commitments. As long as
25 an electrical corporation maintains a supply portfolio mix within
26 forward contract commitments within this range, its portfolio is
27 not subject to reasonableness reviews by the commission.

28 (b) The commission shall deem reasonable, and may not
29 engage in a reasonableness review of, any of the following:



1 (1) A contract entered into by an electrical corporation in
2 accordance with the guidelines set forth in this section.

3 (2) A contract, for which, upon application by the electrical
4 corporation, the commission has granted approval. For all
5 contracts approved pursuant to this paragraph, there shall be no
6 after-the-fact review, whether based on the individual contracts,
7 the electrical corporation's portfolio, or otherwise.

8 (c) Standardized forward contracts shall be deemed reasonable
9 when any of the following circumstances exist:

10 (1) The contract is entered into pursuant to, or on terms
11 comparable with, the results of an open, competitive bidding
12 process. One acceptable form for an open, competitive bid is a
13 request for proposals (RFP). The commission shall deem
14 reasonable any contract the price of which is within the range of
15 prices that is no higher than the lowest 25 percent of the bids
16 received during that particular RFP or other bidding process. An
17 RFP shall be considered open and competitive if the request was
18 distributed to at least 15 potential suppliers, and notice of the RFP
19 was posted on the electrical corporation's website concurrently
20 with the distribution of the RFP.

21 (2) The price of any contract is lower than the electrical
22 corporation's then-current annual volume-weighted portfolio
23 cost, as calculated by the electrical corporation, if the portfolio cost
24 is determined excluding any generation assets retained by the
25 electrical corporation and all pre-existing contracts as of the
26 effective date of the act adding this section.

27 (3) The contract was entered into by the electrical corporation
28 through a power exchange, the Independent System Operator, or
29 any other market recognized by the commission.

30 (4) The contract was executed by the electrical corporation
31 prior to December 31, 2000.

32 (d) A nonstandard contract for electricity, including, but not
33 limited to, a tolling agreement, a peaking service agreement, a
34 load-following service agreement, an ancillary services
35 agreement, or other agreement for a service that is not traded on
36 an exchange, shall be deemed reasonable if the contract price is
37 below the electrical corporation's then-current annual
38 volume-weighted supply portfolio cost as calculated by the
39 electrical corporation, if the portfolio cost is determined excluding

1 any generation assets retained by the electrical corporation and all
2 pre-existing contracts as of the date of enactment.

3 Any fuel costs associated with contracts under this subdivision
4 shall also be deemed reasonable.

5 (e) Electrical corporations are hereby authorized to enter into
6 financial and other contracts to moderate the price risk associated
7 with long-term forward contracts. Contracts under this
8 subdivision may be gas-based or electricity-based. Contracts
9 under this subdivision and the premiums paid by the electrical
10 corporations for the contracts shall be deemed reasonable if the
11 contracts are entered into by the electrical corporation for the
12 purpose of hedging the price risk associated with the electrical
13 corporation's procurement portfolio.

14 (f) No restriction may be placed on the number or length of
15 forward contracts entered into by any electrical corporation
16 pursuant to this section.

17 (g) Electrical corporations should be encouraged to enter into
18 purchase transactions with renewable energy developers. These
19 transactions shall be deemed reasonable if contract prices for
20 renewable energy are less than or equal to 115 percent of the annual
21 average price of the lowest winning bid established pursuant to
22 paragraph (1) of subdivision (c).

23 (h) Subject to Section 583, each electrical corporation shall file
24 with the commission, on a quarterly basis a report describing its
25 then-current annual supply portfolio of long-term forward
26 contracts and financial contracts, together with an explanation of
27 whether and how those contracts that make up the supply portfolio
28 meet the guidelines set forth in this section. The commission may
29 verify the accuracy of these quarterly submissions for the sole
30 purpose of ensuring that these guidelines are satisfied.

31 SEC. 3. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California



1 Constitution.
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